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VIA ECF

Honorable Katherine B. Forrest
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: ***Brennan Center for Justice, et al. v. Dep't of Justice, et al., No. 17-cv-6335 (KBF)***

Dear Judge Forrest:

We represent Plaintiffs Brennan Center for Justice at New York University School of Law and The Protect Democracy Project. As noted in Plaintiffs' previous letter to the Court, Dkt. No. 38, President Trump signed an Executive Order terminating the Presidential Advisory Commission on Election Integrity (the "Commission") on January 3, 2018.¹ However, the Executive Order did not terminate the administration's crusade to prove the President's unsubstantiated assertions that millions voted illegally and erect unjustified barriers to voting, but shifted this work from the Commission to the Department of Homeland Security, a Defendant in this suit. The administration's stated rationale for doing this was to avoid engaging in "legal battles."²

In its official statement announcing the Executive Order, the White House said that President Trump "has asked the Department of Homeland Security to review [the Commission's] initial findings and determine next courses of action."³ Commission Vice Chair Kris Kobach told multiple media outlets that he will be working with DHS and the White House "as the investigations continue within the executive branch,"⁴ and that he expects "the bulk of the DHS

¹ Exec. Order 13,820, 83 Fed. Reg. 869 (Jan. 8, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-01-08/pdf/2018-00240.pdf>.

² *Statement by the Press Secretary on the Presidential Advisory Commission on Election Integrity* (Jan. 3, 2018), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-presidential-advisory-commission-election-integrity/>.

³ *Statement by the Press Secretary on the Presidential Advisory Commission on Election Integrity* (Jan. 3, 2018), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-presidential-advisory-commission-election-integrity/>.

⁴ *Kris Kobach On What Led To The Disbandment Of Controversial Election Commission*, NPR (Jan. 4, 2018), <https://www.npr.org/2018/01/04/575774092/kris-kobach-on-what-led-to-the-disbandment-of-controversial-election-commission>.

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investigation to be done by midsummer.”⁵ Far from dissolving the Commission’s work, Mr. Kobach described the Executive Order as “a tactical shift where the mission of the commission is being handed off to Homeland Security,”⁶ and an “option play” to permit the Commission’s work to continue without the need to respond to litigation.⁷

In a separate suit, the government has put Mr. Kobach’s words into action, refusing to comply with a court order directing release of Commission information because of the Executive Order.⁸ The White House Information Technology Director subsequently submitted a declaration stating that no “state voter data” or “Commission records or data” will be transferred to DHS or any other agency. *Dunlap v. PACEI*, No. 17-cv-2361 (D.D.C.), Dkt. No. 39-2 ¶¶ 4–5. But even without a formal transfer of records, the public statements made by the White House and Mr. Kobach regarding DHS’ role and Mr. Kobach continued involvement provide compelling reason for concern that DHS will pick up where the Commission left off and use the information and approach that are in Mr. Kobach’s mind and possession and, potentially, in those of the staff members of the Commission who may remain involved with DHS’s work.

Plaintiffs acknowledge that the Executive Order changes the circumstances here, but those new circumstances only underscore the propriety of a preliminary injunction focused narrowly on Defendant DHS. The fundamental facts and legal analysis remain unchanged. First, Plaintiffs would still be irreparably harmed if the Commission’s activities are not subject to public scrutiny as DHS continues the work of the Commission, and as suggested by the White House and the Commission’s Vice Chair, proceeds on the Commission’s original timetable, *i.e.*, the issuance of a report and recommendations this summer. In other words, with respect to DHS, the threat of irreparable harm absent timely production of the requested documents remains unchanged. Second, Plaintiffs remain likely to succeed on the merits—and do so with even greater urgency—given the Vice Chair’s brazenly announced mission to scuttle efforts, such as this litigation, to enforce the government’s public disclosure responsibilities through an administrative agency shell game.

Given the Executive Order’s transfer of the Commission’s work to DHS, however, Plaintiffs agree to withdraw that portion of their preliminary injunction request directed toward Defendants DOJ-OIP and DOJ-OLC and agree to those Defendants’ proposed March 31, 2018

⁵ *Trump Disbands Voter Fraud Commission Amid Fights, Lawsuits*, ASSOCIATED PRESS (Nov. 4, 2018), <https://www.nytimes.com/aponline/2018/01/04/us/politics/ap-us-trump-election-commission.html>.

⁶ John Binder, *Voter Fraud Commission ‘Being Handed Off’ to DHS, Will No Longer Be ‘Stonewalled’ by Dems*, BREITBART (Jan. 3, 2018), <http://www.breitbart.com/big-government/2018/01/03/exclusive-kris-kobach-voter-fraud-commission-being-handed-off-to-dhs-will-no-longer-be-stonewalled-by-dems/>.

⁷ Michael Tackett & Michael Wines, *Trump Disbands Commission on Voter Fraud*, N.Y. TIMES (Jan. 3, 2018), <https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraud-commission.html>.

⁸ Colin Woodard, *Trump Refuses to Release Documents to Maine Secretary of State Despite Judge’s Order*, PORTLAND PRESS HERALD, Jan. 6, 2017, <http://www.pressherald.com/2018/01/06/trump-administration-resists-turning-over-documents-to-dunlap/>.

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production deadline. As the Court may recall, Plaintiffs already had agreed to the production deadlines proposed by Defendants DOJ-CRT, OMB, and GSA. Dkt. No. 33 at 1.

Accordingly, Plaintiffs' position with respect to their preliminary injunction motion regarding Defendant DHS is unchanged, and they respectfully request the Court direct DHS to complete its document production by February 28, 2018. We thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Jeremy M. Creelan
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cc: Assistant United States Attorney Casey Kyung-Se Lee (via ECF)